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In The
Supreme Court of the United States

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, et al.,
Respondents.

CRYSTAL D. MEREDITH, CUSTODIAL PARENT AND NEXT FRIEND OF JOSHUA RYAN MCDONALD,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, et al.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Ninth Circuit and the Sixth Circuit

BRIEF OF THE AMERICAN EDUCATIONAL RESEARCH ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

Pursuant to Supreme Court Rule 37, the American Educational Research Association submits this brief as *amicus curiae* in support of Respondents.[1]

Since its founding in 1916, the American Educational Research Association (AERA) has worked to advance science-based knowledge of educational systems and processes. AERA members center their efforts on ensuring that educational research addresses fundamental problems and informs practice and policy that relate to education across the life span and contexts of learning. Researchers in this field address all aspects of education from the processes of teaching and learning, curriculum development, and the social organization of schools to the effects of education on cognitive and social capacity, human development, and health and at-risk behaviors. As the paramount interdisciplinary research society in education, the AERA has embraced the role of improving the nation's education research capacity by promoting application of scientific standards, and by providing training programs, research and mentoring fellowships, and seminars on advanced statistical techniques. The work of the Association is greatly enhanced by the ongoing efforts of its more than 24,000 individual members to produce and disseminate knowledge, refine methods and measures, and stimulate translations and practical applications of research results.

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[1] All parties have filed with the Court their written consent to the filing of all amicus curiae briefs in this case. Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* certifies that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than *amicus curiae*, their members, or their counsel has made a monetary contribution to the preparation or submission of this brief.

This Court has often employed relevant research studies in its equal protection decisions involving race,[2] and, in determining whether there are compelling governmental interests in obtaining the benefits of racial diversity and in avoiding the harms of racial isolation, the Court's decisions should be informed by credible and reliable research findings. In addition, relevant research studies directly address whether the Seattle and Jefferson County school district policies have been narrowly tailored to the interests in promoting diversity and avoiding racial isolation. The AERA has a deep-seated interest in the accurate presentation of educational research on these important questions of law. The AERA is also concerned about the possible misapplication of research evidence in these cases, including potentially misleading analyses offered in *amicus curiae* briefs.[3]

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[2] *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 330 (2003) (citing Brief of American Educational Research Association, et al. as *Amici Curiae*); *Brown v. Board of Educ.*, 347 U.S. 483, 494 n.11 (1954).

[3] *Amicus curiae* briefs submitted on behalf of the Petitioners propose that the research evidence in this area is largely inconclusive, employs methodologies that are unsound, or shows that racial diversity offers only the slightest of positive effects. *See* Brief of David J. Armor, Abigail Thernstrom, and Stephan Thernstrom as *Amici Curiae* in Support of Petitioners [hereinafter Armor et al. Brief]; Brief of *Amici Curiae* Drs. Murphy, Rossell and Walberg in Support of Petitioners [hereinafter Murphy et al. Brief]. Unanimity is rare in any body of scientific research, but there is substantial agreement that the best available research evidence, which is composed of studies employing sound and reliable methodologies, solidly supports the Respondent school districts in these cases. Weaknesses in the arguments of Petitioners' *amici*, which include incomplete analyses of the literature, critiques of well-established scientific methodologies, and reliance on studies that are outdated or

Accordingly, the AERA provides summaries and citations to pertinent studies in this brief to assist the Court's understanding of the research evidence. The brief highlights some of the major sources of agreement among leading researchers and provides examples of the most recent studies that have direct bearing on the constitutional questions before the Court.

SUMMARY OF ARGUMENT

Since *Brown v. Board of Education,* this Court has recognized the substantial harms caused by racially segregated public schools. The Court has also acknowledged the significant benefits that result from diverse student bodies in higher education, as documented by a well-developed body of scientific knowledge. The research literature focusing on the effects of racial composition in elementary and secondary education is also extensive, and a wide range of studies demonstrate the benefits that accrue from racially diverse schools, as well as the harms associated with racial isolation and the resegregation of previously desegregated school systems.

Research studies have shown that racial diversity in elementary and secondary education leads to important short-term and long-term benefits for students of all racial backgrounds. Among these benefits are improved cross-racial understanding; the reduction of stereotyping and prejudice; gains in student achievement; a strong sense of civic engagement and willingness to live and work in diverse settings; and better preparation for higher education, work, and participation in a diverse society. Not only do diverse schools benefit students as individuals, they also promote so-

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inconsistent with more recent research, are addressed in the appropriate sections and footnotes of this brief.

cial cohesion and reinforce democratic values that this Court has long recognized as foundations for good citizenship.

Educational research conducted since *Brown* underscores the conclusion that racially isolated schools offer students unequal educational opportunities and can cause significant educational harms. Educational inequalities in racially isolated schools continue to arise in a variety of ways, including more limited educational resources, fewer qualified teachers, inadequate access to peers who can help improve achievement, and curricular disadvantages, such as fewer honors or college preparatory courses. Problems of teacher quality and high teacher turnover rates are particularly severe in racially isolated schools; recent research shows that teacher attrition can be driven by the racial composition of schools, and not simply by working conditions or associated poverty in the district.

Educational research also supports holding that the Seattle and Jefferson County school district policies are narrowly tailored to the compelling interests in promoting racial diversity, avoiding racial isolation, and maintaining desegregated schools. There are no undue burdens arising from voluntary race-conscious assignment policies, and research studies show that policies using race-neutral criteria such as socioeconomic class are less effective than race-conscious measures in achieving racial diversity. Evidence from previously desegregated school districts that have undergone resegregation suggests that race-neutral assignment policies can lead to conditions that result in significant harms.

ARGUMENT

I. EDUCATIONAL RESEARCH SUPPORTS THE COMPELLING INTERESTS IN PROMOTING RACIAL DIVERSITY, AVOIDING RACIAL ISOLATION, AND MAINTAINING DESEGREGATED SCHOOLS

Since *Brown v. Board of Education*, 347 U.S. 483, 494 (1954), this Court has recognized the substantial harms caused by racially segregated public schools, and it has sustained the constitutional imperative to eliminate school segregation "root and branch." *Green v. County Sch. Bd.*, 391 U.S. 430, 438 (1968). In *Grutter v. Bollinger*, the Court further recognized the significant benefits that accrue from student body diversity in higher education and acknowledged that diversity "promotes 'cross-racial understanding,' helps to break down racial stereotypes, and 'enables [students] to better understand persons of different races.'" 539 U.S. 306, 330 (2003). Moreover, in upholding the compelling interest in diversity, the *Grutter* Court found that "numerous studies show that student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" *Id.*

Like the benefits of diversity in higher education, the benefits of diversity in elementary and secondary education are "not theoretical but real." *Grutter*, 539 U.S. at 330. Research studies across a variety of academic disciplines and scientific methodologies have shown that racial diversity leads to important short-term and long-term benefits, including improved cross-racial understanding and the reduction of racial prejudice; positive effects on student achievement; a stronger sense of civic engagement and willingness to

live and work in diverse settings; and better preparation for higher education and employment. Research confirms that the benefits of diversity accrue not only to minority students who attend diverse schools, but to students of all racial backgrounds; moreover, not only do diverse schools benefit students as individuals, they also promote social cohesion and reinforce democratic values that this Court has long recognized as "the very foundation of good citizenship." *Brown*, 347 U.S. at 493. The Seattle and Jefferson County school districts' interests are thus especially compelling because of the broad and powerful impact of public education, for this Court has "repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to 'sustaining our political and cultural heritage' with a fundamental role in maintaining the fabric of society." *Grutter*, 539 U.S. at 331.

A. Racial Diversity Promotes Cross-Racial Understanding and Reduces Prejudice

Promoting cross-racial understanding among our nation's students is a fundamental educational objective because, as both history and scientific research confirm, racial stereotypes and prejudices are powerful sources of division that can undermine academic success, social cohesion, and community stability. Prejudice reduction in elementary and secondary education is especially important because racial prejudices and implicit biases are developed early in life and can become entrenched over time. *See* Frances E. Aboud, *Children and Prejudice* (1988); Andrew Scott Baron & Mahzarin H. Banaji, *The Development of Implicit Attitudes: Evidence of Race Evaluations from Ages 6 and 10 and Adulthood*, 17 Psychol Sci. 53 (2006).

Diverse school settings have been shown to be effective in reducing stereotypes and prejudice by promoting greater levels of contact among different groups and by fostering intergroup friendships. The literature on intergroup contact and prejudice reduction is indeed extensive, and both individual research studies and more comprehensive literature reviews and meta-analyses—statistical analyses that draw overall conclusions based on data compiled from a large number of relevant studies—confirm the positive effects of intergroup contact in reducing prejudice.[4] *See, e.g.*, Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. Personality & Soc. Psychol. 751 (2006); Thomas F. Pettigrew, *Intergroup Contact Theory*, 49 Ann. Rev. Psychol. 65 (1998).

A number of the most recent studies in developmental psychology illustrate that negative stereotypes and prejudice among children are influenced by racial diversity in their schools. Two studies conducted in racially and ethnically diverse schools found minimal evidence of implicit bias in examining first-graders' and fourth graders' interpretations of ambiguous interracial encounters, where subjects can reveal implicit biases by attributing negative or positive characteristics to different racial characters. Heidi McGlothlin et al., *European-American Children's Intergroup Attitudes About Peer Relationships*, 23 Brit. J. Developmental

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[4] *Amici curiae* for Petitioners rely primarily on a small number of studies conducted in the 1970s and 1980s to argue that the research literature does not support the proposition that diversity and greater intergroup contact influence racial attitudes and prejudices. *See* Armor et al. Brief, *supra*, at 26-29; Murphy et al. Brief, *supra*, at 13-14. These conclusions are contradicted by the voluminous findings on intergroup contact and prejudice contained in recent studies, literature reviews, and meta-analyses that cover decades of scientific research.

Psychol. 227 (2005) (examining bias among white students); Nancy Geyelin Margie et al., *Minority Children's Intergroup Attitudes About Peer Relationships*, 23 Brit. J. Developmental Psychol. 251 (2005) (examining bias among minority students). However, a parallel study of white children in racially homogeneous schools found evidence of stronger biases, with the children rating minorities more negatively than whites and indicating that cross-racial friendships between whites and minorities would be much less likely. Heidi McGlothlin & Melanie Killen, *Intergroup Attitudes of European American Children Attending Ethnically Homogeneous Schools*, 77 Child Dev. 1375 (2006). Taken together, the studies show that racial diversity and intergroup contact can play important roles in shaping biases in children's interactions with their peers and their formation of cross-racial friendships.

A recent meta-analysis conducted by Pettigrew and Tropp that analyzed 515 studies—drawing on over 700 samples and over 250,000 individual participants—makes clear that intergroup contact reduces prejudice and that greater intergroup contact is generally associated with lower levels of prejudice. Pettigrew & Tropp, *supra*, at 766. Their analysis also confirms that optimal conditions for intergroup contact—equal status between groups in the situation, common goals, intergroup cooperation, and the support of authorities, law, or custom—generally enhance the positive effects of intergroup contact on prejudice reduction. *Id.* (citing optimal conditions proposed in Gordon Allport, *The Nature of Prejudice* (1954), and also noting that Allport's optimal conditions are not required to produce reductions in prejudice). Pettigrew and Tropp also conclude that institutional support can be "an especially important condition for facilitating positive contact effects," *id.*, which implies that school districts should play an

active role in promoting diversity and intergroup contact in order to attain the strongest effects in reducing prejudice.

Research on the effectiveness of school programs designed to promote cross-racial understanding reinforces the importance of policies that create diverse student bodies with sufficient numbers of students of different racial groups. Programs that indirectly encourage cross-racial understanding but do not rely on the actual presence of students of different races have been found to be less effective than direct measures, such as cooperative team learning strategies, that incorporate students present in the school; research suggests that indirect programs have little impact on changing the actual behavior of students. *See* Willis D. Hawley, *Designing Schools that Use Student Diversity to Enhance Learning of All Students, in Lessons in Integration: Realizing the Promise of Racial Diversity in America's Schools* (Erica Frankenberg & Gary Orfield eds., Univ. of Virginia Press, forthcoming 2006). These findings support the logical notion that in order for the benefits of intergroup contact to accrue, there must be sufficient students of different races present in the schools to interact; they also underscore the importance of racial diversity in developing the teamwork skills that are essential for functioning in a diverse, democratic society.

B. Racial Diversity Promotes Student Achievement

As this Court recognized in *Grutter*, diverse schools promote positive learning outcomes and better prepare students for an increasingly diverse workforce and society. *Grutter*, 539 U.S. at 330. The effects of racial composition on learning outcomes in K-12 education are complicated by many variables, including students'

socioeconomic status, school resources, peer effects, and teacher quality, but both early desegregation research and recent statistical and econometric analyses that isolate the effects of racial composition on student achievement indicate that there are positive effects on minority student achievement scores arising from diverse school settings. *See generally* Jomills Henry Braddock II & Tamela McNulty Eitle, *The Effects of School Desegregation, in Handbook of Research on Multicultural Education* (James A. Banks & Cherry A. McGee Banks eds., 2d ed. 2004); Janet Ward Schofield, *Review of Research on School Desegregation's Impact on Elementary and Secondary School Students, in Handbook of Research on Multicultural Education* 597 (James A. Banks & Cherry A. McGee Banks eds. 1995). Moreover, these gains do not come at the expense of white students, whose achievement has been shown to be unaffected by desegregation.

Early literature on desegregation from the 1970s and 1980s suggests that desegregation has had positive effects on the reading skills of black students. Schofield, *supra,* at 610-11. For instance, in their 1983 meta-analysis of 93 studies, which included over 300 samples, that examined the effects of school desegregation on black student achievement, Crain and Mahard found consistent results involving enhanced black achievement, with some variation in the extent and magnitude of these effects across districts, schools, grade level, and desegregation strategies. Robert L. Crain & Rita E. Mahard, *The Effect of Research Methodology on Desegregation Achievement Studies: A Meta-Analysis,* 88 Am. J. Soc. 839 (1983). Their analysis further found agreement in the literature on achievement benefits at the lower grade levels, suggesting that the age at which black students enter desegregated schools is critically important. And examining a subset of 23

studies that compared the achievement of desegregated black students in kindergarten and first grade with their segregated peers, Mahard and Crain found even stronger effects (0.25 of a standard deviation, the equivalent of approximately one-third of a grade level).[5]

More recent analyses of students' test score data have confirmed positive effects on minority student achievement arising in schools with more diverse racial compositions, with no negative effects on white student achievement. *See, e.g.*, Kathryn M. Borman et al, *Accountability in a Postdesegregation Era: The Continuing Significance of Racial Segregation in Florida's Schools,"* 41 Am. Educ. Res. J. 601 (2004); Eric A. Hanushek, John F. Kain & Steven G. Rivkin, *New Evidence about* Brown v. Board of Education: *The Complex Effects of School Racial Composition on Achievement* (2004), *available at* http://edpro.stanford.edu/hanushek/admin/pages/files/uploads/race.pdf; Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. Rev. 1513 (2003).

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[5] Schofield's 1995 review of the desegregation literature also found that, even with a much more limited literature on Latinos, the "data are consistent with the more extensive data regarding African American achievement" and that there was some evidence of small gains in achievement for Latinos in desegregated schools versus segregated schools. She concluded at that time, however, that additional research would be needed to draw firm conclusions. Schofield, *supra*, at 602-03. More recent analyses of Latino students in Denver have found negative impacts on average mathematics achievement scores for Latinos who were in racially isolated schools after the end of court-ordered desegregation. *See* Catherine Horn & Michal Kurlaender, *The End of* Keyes*—Resegregation Trends and Achievement in Denver Public Schools* (2006), *available at* http://www.piton.org.

For example, an econometric analysis of longitudinal data in Texas schools by Hanushek et al. tracked the scores of 200,000 students across the state and controlled for several variables, including socioeconomic status, school quality, and peers' achievement. The researchers found strong evidence that the proportion of black students in the school "negatively affects mathematics achievement growth for blacks, particularly those higher up the initial achievement distribution," which means that in racially isolated schools with high proportions of black students, there could be significant increases in achievement over time with greater diversity in the schools. The researchers further indicated that "the effects do not appear to be driven by school quality differences, achievement differences of classmates, or even the specific distribution of ability within the school." Hanushek et al., *supra,* at 23. The Hanushek et al. study also found no significant effects of black concentration on the achievement of white students.

Contrary to what is suggested by Petitioners' *amici curiae,* who rely on older studies[6] and attempt to dis-

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[6] *Amici curiae* for Petitioners rely in part on a series of 1984 studies by the National Institute of Education to minimize the effects of desegregation on achievement. Armor et al. Brief, *supra,* at 15-17; Murphy et al. Brief, *supra,* at 8-10. However, the Murphy et al. Brief omits important language stating "Desegregation increased mean reading levels" from their quotation of an NIE study, and neither brief discusses the methodological limitations that occurred because of the exclusion of a large number of studies, as indicated by the panel chair, Thomas D. Cook. *See* Thomas D. Cook, *What Have Black Children Gained Academically from School Integration?: Examination of the Meta-Analytic Evidence, in School Desegregation and Black Achievement* 39 (1984) (stating that the studies "may have unnecessarily restricted both the sample of studies and the het-

count the most recent findings, the literature on the positive effects of diversity on achievement is sufficiently strong to draw conclusions about the effectiveness of diversity in improving student achievement. *See* Armor et al. Brief, *supra,* at 12-21; Murphy et al., Brief, *supra,* at 8-13. The most recent studies are particularly compelling because of methodological improvements that allow researchers to carefully control for other factors, such as socioeconomic status, school quality, and peer effects, in order to isolate the effects of racial composition on achievement scores. Indeed, Professor Armor's own 2006 analysis of the relationship between racial composition and student achievement, which is based on national test data from the National Assessment of Educational Progress (NAEP), suggests that there is a modest positive relationship on a national level between racial composition and mathematics scores and a somewhat weaker effect for reading scores. David J. Armor & Shanea J. Watkins, School Segregation and Black Achievement: New Evidence from the 2003 NAEP (unpublished manuscript, June 2006); *see also* David J. Armor, *Lessons Learned from School Desegregation, in Generational Change: Closing the Test Score Gap* 115 (Paul Peterson ed., 2006) (finding negative relationship between black percentage in school and both black and white mathematics scores on 1996 NAEP; after adjusting for socioeconomic status, black students in schools that are 80-100 percent black score ten points lower than black students in racially diverse schools).

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erogeneity in assumptions on which the theory behind the use of multiple panelists depends").

C. Racial Diversity Promotes Long-Term Benefits for Students

A related body of desegregation literature indicates that exposure to desegregation and racial diversity in elementary and secondary education can lead to positive racial experiences as adults. *See, e.g.*, Jomills Henry Braddock, Marvin P. Dawkins & William T. Trent, *Why Desegregate? The Effect of School Desegregation on Adult Occupational Segregation of African Americans, Whites, and Hispanics*, 31 Int'l J. Contemp. Soc. 271 (1994); Jomills H. Braddock, *The Perpetuation of Segregation Across Levels of Education: A Behavioral Assessment of the Contact-Hypothesis*, 53 Soc. Educ. 178 (1980); James M. McPartland & Jomills H. Braddock, *Going to College and Getting a Good Job: The Impact of Desegregation, in Effective School Desegregation* (Willis D. Hawley ed. 1981).

For example, one analysis of twenty-one studies examining "perpetuation theory"—a theory proposing that racial segregation tends to repeat itself across an individual's life experiences and across institutions—found that desegregated experiences for black students typically lead to increased interaction with members of other racial groups in subsequent years. Amy Stuart Wells & Robert L. Crain, *Perpetuation Theory and the Long-Term Effects of School Desegregation*, 64 Rev. Educ. Res. 531 (1994). Results from the studies suggested that school desegregation had positive effects on both black and white students in that students who attended desegregated schools were more likely to function effectively in desegregated settings, such as colleges and universities, workplaces, and neighborhoods, later in life. The Wells and Crain analysis concludes that desegregation has the effect of "break[ing] the cycle of segregation and allow[ing] nonwhite students access to high-status institutions and the power-

ful social networks within them." *Id.* at 531. Thus "interracial contact in elementary or secondary school can help blacks overcome perpetual segregation." *Id.* at 552.

As one recent study on the effects of desegregated schools on long-term benefits makes clear, "desegregation made the vast majority of the students who attended these schools less racially prejudiced and more comfortable around people of different backgrounds." Amy Stuart Wells, et al., *How Desegregation Changed Us: The Effects of Racially Mixed Schools on Students and Society* (Apr. 2004), *available at* http://cms.tc.columbia.edu/i/a/782_ASWells041504.pdf. According to Wells' study, which based its conclusions on data drawn from interviews of over 500 high school graduates who graduated from desegregated schools in 1980, educators, advocates, and policy makers who were involved in racially diverse public high schools nearly twenty-five years ago, found that "the vast majority of graduates across racial and ethnic lines greatly valued the daily cross-racial interaction in their high schools. They found it to be one of the most meaningful experiences of their lives, the best—and sometimes the only—opportunity to meet and interact regularly with people of different backgrounds." *Id.* at 6.

Analyses based on interviews of graduates of desegregated schools are reinforced by recent surveys on the attitudes of high school students toward peers who belong to other racial groups, which indicate that students of all racial groups who attend more diverse schools have higher levels of comfort with individuals from racial groups other than their own, have an increased sense of civic engagement, and have a greater desire to live and work in settings with multiple racial

groups.[7] Michal Kurlaender & John T. Yun, *Fifty Years after Brown: New Evidence of the Impact of School Racial Composition on Student Incomes*, 6 Int'l J. Educ. Pol'y Res. & Prac. 51 (2005). In the survey of students in the Jefferson County School District, 85 percent of students reported that they were prepared to work in a diverse job setting and would be prepared to do so in the future, while over 80 percent of African American students and white students reported that their school experience had helped them to work more effectively with and get along with members of other races and ethnic groups. Michal Kurlaender & John T. Yun, *Is Diversity a Compelling Educational Interest?: Evidence from Louisville, in Diversity Challenged: Evidence on the Impact of Affirmative Action* 111, 130 (Gary Orfield with Michal Kurlaender eds. 2001).

Labor market research also shows that the benefits of a desegregated education can continue as students enter the workforce. For instance, a study of black students in Hartford, Connecticut concluded that students who attended desegregated schools were more likely to have white-collar jobs and that the men were more likely to have completed more years of education than

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[7] *Amici curiae* for Petitioners criticize the methodology of survey research in the field for lacking control groups containing students in non-diverse schools against which responses by students in diverse schools could be measured. *See* Armor et al. Brief, *supra*, at 29. Employing control groups, while essential in experimental studies that use treatment groups and control groups to measure the effects of a particular treatment, is not mandated in other forms of scientific inquiry such as survey research, which is commonly used in a wide range of social science disciplines; nor does the absence of a control group, in and of itself, make a study invalid or unsound in any field of science. Experimental design is only one among many robust scientific methodologies used in the social sciences, and the research that *amici* themselves cite includes non-experimental studies.

comparable students who had attended segregated schools. Robert L. Crain & Jack Strauss, *School Desegregation and Black Occupational Attainments: Results from a Long-Term Experiment* (1985). A more recent analysis on the long-term labor market implications of school resource equalization before *Brown* and school desegregation after *Brown* found that desegregation had significant, positive effects on the incomes of southern blacks (as well as on their high school completion rates) after the implementation of desegregation. Orley Ashenfelter, William J. Collins & Albert Yoon, *Evaluating the Role of Brown vs. Board of Education in School Equalization, Desegregation, and the Income of African Americans* 23-24 (Princeton Law & Public Affairs Working Paper Series, Paper No. 05-001, 2005), *available at* http://ssrn.com/abstract=747485.

D. Racial Isolation is Associated with Unequal Educational Opportunities and a Variety of Harms

In *Brown*, this Court acknowledged the psychological and educational harms caused by public school segregation. 347 U.S. at 494 & n.11. The large volume of research conducted since *Brown* has underscored this conclusion and has shown that segregated, predominantly minority schools offer students unequal and inferior educational opportunities. *See generally School Resegregation: Must the South Turn Back* (John Charles Boger & Gary Orfield eds., 2005); Gary Orfield & Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation* (2006), *available at* http://www.civilrightsproject.harvard.edu.

Psychological harms continue to be associated with racial isolation. For example, recent survey research focusing on Southern California middle school students (including over 500 black students and over 900 Latino

students) found that black and Latino students in less diverse schools felt less safe in school, were more harassed by peers, felt more lonely, and had lower self-worth than comparable students in more diverse schools, even when controlling for classroom differences in academic engagement. Jaana Juvonen, Adrienne Nishina & Sandra Graham, *Ethnic Diversity and Perceptions of Safety in Urban Middle Schools,* 17 Psychol. Sci. 393 (2006).

Educational inequalities in racially isolated schools arise in several ways, such as limited educational resources (whether measured by class size, facilities, or per-pupil spending), fewer qualified teachers, and inadequate access to peers who can help improve achievement. Curricular disadvantages, such as fewer honors, college preparatory, and Advanced Placement courses, along with within-school tracking and inadequate resources for counseling, only exacerbate the degree of inequality and limit opportunities for higher education. *See* John T. Yun & Jose F. Moreno, *College Access, K-12 Concentrated Disadvantage, and the Next 25 Years of Education Research,* 35 Educ. Researcher, Jan.-Feb. 2006, at 12. Consequently, students in predominantly minority schools are also less likely to graduate from college, even after taking into account prior test scores and socioeconomic status. *See* Eric M. Camburn, *College Completion among Students from High Schools Located in Large Metropolitan Areas,* 98 Am. J. Educ. 551 (1990). *See generally* Douglas S. Massey et al., *The Source of the River* (2003).

Not surprisingly, measures of educational outcomes, such as scores on standardized tests and high school graduation rates, are lower in predominantly minority schools. *See, e.g.,* Roslyn Arlin. Mickelson, *Segregation and the SAT,* 67 Ohio St. L. J. 157 (2006); Christopher B. Swanson, *Who Graduates? Who Doesn't?*

A Statistical Portrait of Public High School Graduation, Class of 2001 (2004), *available at* http://www.urban.org/url.cfm?ID=410934. For example, one recent study of metropolitan Boston found that only 61 percent of tenth-grade students in high-minority/high-poverty schools passed the state-required English/Language Arts examination in the 2002-03 school year, compared to 96 percent of the students attending low-minority/low-poverty schools. Chungmei Lee, *Educational Outcomes in Metropolitan Boston* (2004), *available at* http://www.civilrightsproject.harvard.edu.

Recent research on teacher quality and turnover in predominantly minority schools is particularly revealing because studies indicate that race is a salient factor driving the decisions of teachers—and approximately 85 percent of the nationwide total are white—to leave minority schools, beyond actual working conditions or the presence of concentrated poverty in the school district. *See* Benjamin Scafidi, David L. Sjoquist & Todd Stinebrickner, *Race, Poverty, and Teacher Mobility,* (Andrew Young School of Policy Studies Research Paper Series, Aug. 2005), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=902032; *see also* Eric A. Hanushek, John F. Kain & Steven G. Rivkin, *Why Public Schools Lose Teachers,* 39 J. Hum. Resources 326 (2004); Susanna Loeb, Linda Darling-Hammond & John Luczak, *How Teaching Conditions Predict Teacher Turnover in California Schools,* 80 Peabody J. Educ. 44 (2005).

Research further shows that high rates of teacher turnover and the lack of qualified and experienced teachers in predominantly minority schools have clear negative consequences for student learning and achievement. *See* Charles Clotfelter, Helen Ladd &

Jacob Vigdor, *Who Teaches Whom? Race and the Distribution of Novice Teachers,* 24 Econ. Educ. Rev. 377 (2005); Catherine Freeman, Benjamin Scafidi & David Sjoquist, *Racial Segregation in Georgia Public Schools, 1994-2001: Trends, Causes and Impact on Teacher Quality, in School Resegregation: Must the South Turn Back* 154 (John Charles Boger & Gary Orfield eds., 2005). The multiple harms associated with racial isolation thus make their avoidance especially compelling.

II. EDUCATIONAL RESEARCH SUPPORTS UPHOLDING THE SEATTLE AND JEFFERSON COUNTY POLICIES AS NARROWLY TAILORED

Research studies provide direct support for concluding that the Seattle the Jefferson County school assignment policies are narrowly tailored. The Seattle and Jefferson County policies employ broad and flexible goals—not rigid quotas or fixed numbers—that advance the underlying interest in racial diversity and are measured responses to the documented problems of racial isolation and tokenism. The assignment policies do not harm non-minority students or cause undue burdens—as the previously cited research consistently shows, white student achievement is not negatively affected by desegregation, and no student of any race is ever denied a basic public school education under the race-conscious assignment policies. Research further shows that race-neutral student assignment policies are not as effective as race-conscious policies in securing the benefits of racial diversity. Indeed, recent evidence from previously desegregated school districts that have experienced resegregation shows that there can be significant problems attributable to replacing race-conscious assignment policies with race-neutral ones.

A. The Use of Flexible Goals Promotes the Benefits of Diversity and Avoids the Harms of Tokenism and Negative Stereotyping

The Seattle and Jefferson County policies are flexible measures that employ race as one of several factors in school assignment decisions and do not violate this Court's prohibitions on non-remedial quotas or racial balancing. *See Grutter,* 539 U.S. at 334-35 (distinguishing goals from unlawful quotas or racial balancing). Both school districts pay attention to the percentages of students within their schools by race, but race does not predominate as a factor in assignment, and the districts employ broad numerical goals that constitute "a good-faith effort . . . to come within a range demarcated by the goal itself." *Id.* at 335.

The school districts' race-conscious policies are fully consistent with research evidence demonstrating the benefits of racial diversity. There are no fixed numbers that are recommended by the research, but studies on intergroup contact propose that the benefits of intergroup contact can be optimized when, among other things, there is equal status between groups. *See* Allport, *supra*; Pettigrew & Tropp, *supra.* Research summarizing studies of desegregation is consistent with this proposal, suggesting that "approximately equal proportions are best for maximizing contact and friendship between ingroup and outgroup members. If one or the other groups in a school has a large percentage (over 70%), it has the power to determine the signs and behaviors by which in-school status is ascribed or achieved." John B. McConahay, *Reducing Racial Prejudice in Desegregated Schools, in Effective School Desegregation* 35, 39 (Willis D. Hawley ed. 1981). Moreover, "[m]embers of the racial or ethnic groups in the numerical minority protect themselves by attempting to isolate themselves from the larger

group." *Id.* at 40; *see also* Maureen T. Hallinan & Stevens S. Smith, *The Effects of Classroom Racial Composition on Students' Interracial Friendliness,* 48 Soc. Psychol. Q. 3 (1985) (finding that students of one racial group were friendlier toward students of another racial group as the proportion of the group increased and concluding that equally balanced classrooms maximize the interracial friendliness of blacks and whites).[8]

If securing the benefits of racial diversity were the only goal of their assignment policies, the school districts might employ strategies to optimize the percentages of students in their schools by seeking equal numbers or proportionality, but this is clearly not the case. The Seattle and Jefferson County school districts have chosen to employ race more modestly and use assignment policies that allow non-racial factors, such as sibling enrollments, proximity to neighborhood schools, and distance from non-neighborhood schools, to be considered and to predominate in student assignments.

Research evidence further supports the use of goals and target ranges to prevent the harms associated with extreme segregation and tokenism (also known as "solo effects" within the psychological literature). Isolation, domination, and negative stereotyping are common problems that arise when minority numbers are espe-

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[8] Recent expert witness testimony in voluntary desegregation litigation has confirmed these earlier findings. *See Comfort v. Lynn Sch. Comm.*, 418 F.3d 1, 20-21 (1st Cir. 2005) (en banc) (citing expert testimony that "educational benefits of diversity are predicated on the presence of a critical mass of white and nonwhite students, a figure that social science literature approximates at 20%" and "while critical mass is the point at which educational benefits begin to accrue, those benefits increase as a school nears an even balance between white and nonwhite students"), *cert. denied,* 126 S. Ct. 798 (2005).

cially low and the norms and behaviors of majority groups dominate. *See* Mischa Thompson & Denise Sekaquaptewa, *When Being Different is Detrimental: Solo Status and the Performance of Women and Racial Minorities,* 2 Analyses of Soc. Issues & Pub. Pol'y 183 (2002); Rosabeth Moss Kanter, *Men and Women of the Corporation* (1977) (describing tokenism effects for minority groups of 15 percent or less within an institution). Experimental research has also shown that tokenism can cause self-consciousness that results in deficits in cognitive functioning and memory. Charles G. Lord & Delia S. Saenz, *Memory Deficits and Memory Surfeits: Differential Cognitive Consequences of Tokenism for Tokens and Observers,* 49 J. Personality & Soc. Psychol. 918 (1985).

The problem of "stereotype threat" can also cause harmful effects similar to tokenism. Research suggests that when people are a minority in a group, particularly women and racial minorities, they may experience stereotype threat, namely being at risk of confirming, as self-characteristics, a negative stereotype about one's group. *See* Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans,* 69 J. Personality & Soc. Psychol. 797 (1995). Stereotype threat may cause students not to perform to their full potential or not to express their skills and knowledge on tests. In controlled research studies, Steele and Aronson found that black students' underperformance in relation to whites on standardized tests could be explained through stereotype threat. Similarly, a 2003 study found that black and Latino high school students were at risk of underperformance in college because of stereotype threat. Massey et al., *supra* (finding that on self-esteem and self-efficacy inventories, students reported they were sensitive to the opinions of white students and teachers, and expressed

doubts that they were good students and had fears of poor performance in high school and college).

Employing race-conscious goals in multiple-factor school assignment policies prevents these types of harms and complies with the mandates of narrow tailoring.

B. Race-Neutral Policies are Not as Effective as Race Conscious Policies in Promoting Racial Diversity and Avoiding Racial Isolation

1. Race-Conscious Managed Choice Policies are More Effective than Uncontrolled Choice Policies in Achieving Racial Diversity

This Court has long recognized that school assignment policies which grant "freedom of choice" are often inadequate as substitutes for more direct race-conscious measures that achieve desegregation, *see, e.g., Green v. County Sch. Bd.*, 391 U.S. 430, 440-41 (1968), and recent desegregation research confirms that uncontrolled choice policies often lead to racial homogeneity and even higher levels of segregation, *see, e.g., School Choice and Diversity: What the Evidence Says* (Janelle Scott ed., 2005); Erica Frankenberg & Chungmei Lee, *Race in American Public Schools: Rapidly Resegregating School Districts* (2002), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Race_in_American_Public_Schools1.pdf.

Race-conscious school assignment policies that manage and limit choice, however, can help sustain diversity and can create the student bodies necessary to achieve diversity's benefits. For instance, in one recent study of twenty-two major school districts across the country, researchers found that market-based choice systems added to overall school segregation, beyond what was attributable to residential housing patterns.

Salvatore Saporito & Deenesh Sohoni, *Coloring Outside the Lines: Racial Segregation in Public Schools and Their Attendance Boundaries,* 79 Soc. Educ. 81 (2006). The researchers concluded that an expansion of "free market" choice policies would exacerbate racial segregation within large, urban school districts. They reported that school districts with race-conscious policies in the form of controlled choice options achieved substantial success in reducing racial segregation between black and white students; they also suggested that school choice need not be a barrier to racial integration if student mobility is restricted in ways that limit the isolation of white students from non-white students.

2. Policies Based on Socioeconomic Criteria are Not Adequate to Produce Racially Diverse Student Bodies

Recent analyses of school districts that have employed socioeconomic criteria—usually based on eligibility for free or reduced-price lunch programs—have shown that these policies are unlikely to produce the same levels of racial diversity attainable through race-conscious measures. Although race and class can be highly correlated, they are not perfectly correlated, and research shows that residential segregation, which typically fuels school segregation, can be more heavily driven by race than by class. *See* John Logan, *Separate and Unequal: The Neighborhood Gap for Blacks and Hispanics in Metropolitan America* (2002), *available at* http://mumford.albany.edu/census/SepUneq/SUReport/Separate_and_Unequal.pdf. Thus many minority families, despite having higher income levels, are not able to gain access to predominantly white neighborhoods and to enroll their children in the local schools. Given these problems, school assignment policies based solely

on socioeconomic status are unable to address fully the effects of racial segregation.

A recent statistical analysis exploring the possibility of employing income-based school assignment policies in the nation's largest urban school districts concluded that "income-based integration does not guarantee even a modest level of racial desegregation." Sean F. Reardon, John T. Yun & Michal Kurlaender, *Implications of Income-Based School Assignment Policies for Racial School Segregation*, 28 Educ. Evaluation & Pol'y Analysis 49, 67 (2006). The Reardon et al. study examined data from eighty-nine of the country's largest school districts and computed various estimates of possible and probable levels of racial segregation that would result from race-neutral, income-based school assignment policies. The study found that even under optimal circumstances—including circumstances that would be highly unlikely in practice, such as obtaining a perfect income distribution among student assignments and employing "continuous income measures" such as exact family income rather than poverty status or free lunch eligibility[9]—income-based policies would still not guarantee racial integration.

Reardon et al. concluded that "income and race cannot stand as proxies for one another in school integration policies. Absent some substantial decline in ra-

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[9] Using either poverty status or free/reduced-price lunch eligibility as a criterion has significant problems because each is a "dichotomous measure" for which a student is either eligible or ineligible and does not take into account variations in income above the eligibility baseline, which can range from just-above the baseline to the very affluent. "Continuous measures," such as actual family income levels, might provide a more accurate distribution of students, but obtaining these data is impracticable for school districts. *See* Reardon et al., *supra*, at 67.

cial residential segregation, race-neutral assignment policies are unlikely to produce significant racial school desegregation." *Id.* at 68. In addition, their review of recent analyses of districts that have employed race-neutral socioeconomic criteria suggests that these attempts have not been as successful as prior race-conscious policies in achieving racial diversity. Preliminary evaluation of the socioeconomic plan in Wake County, North Carolina shows that adoption of the class-based plan in 1999 initially led to an increase in racially identifiable schools (those with either unusually high or unusually low racial minority percentages), with a stabilization of the increases in more recent years; preliminary information on the socioeconomic plan in San Francisco, California indicates that desegregation levels have fallen under the new plan—while 64 percent of San Francisco schools were in compliance with racial desegregation standards during 1998-99, the last year of a consent decree, only 52 percent of schools met the same standard in 2002-03, two years after the start of the race-neutral plan. *Id.* at 52-53.

3. Race-Neutral Policies Can Lead to Resegregation and Its Associated Harms

Research findings focusing on school districts that are no longer bound by court-ordered desegregation policies have revealed significant problems accompanying resegregation when these districts have abandoned race-conscious measures and replaced them with race-neutral plans. Resegregation is typically accompanied by declines in both educational resources and outcomes, including lower scores on student achievement tests.

For instance, a study of the Charlotte-Mecklenburg school district, which until 2002 had been subject to a desegregation plan for more than three decades, found

increasing racial isolation that has led to a variety of negative educational effects. Roslyn Arlin Mickelson, *The Academic Consequences of Desegregation and Segregation: Evidence from the Charlotte-Mecklenburg Schools*, 81 N.C. L. Rev. 1513 (2003). After the declaration of unitary status in 2002, the Charlotte-Mecklenburg system implemented a race-neutral, limited-choice policy that focused on neighborhood school assignment; a majority of schools soon began to experience resegregation and in the year following the end of the desegregation plan the percentage of black students in racially isolated schools increased by eleven percent. *Id.* at 1558.

Mickelson's study found that racially identifiable black schools had deficiencies in teacher resources and material resources (up-to-date media centers, ample access to current technology, and newer, safer buildings), fewer Advanced Placement courses, and fewer services for gifted and talented students. *Id.* at 1547-48. In addition, the study found that minority students were disproportionately tracked into lower level placements and into special education classes, and that achievement scores in many racially identifiable schools were markedly lower than in the more racially integrated schools. *Id.* at 1558-59.

Similar patterns of resegregation and declines in student achievement have been documented in studies of Norfolk, Virginia, *see* Vivian Ikpa, *The Effects of Changes in School Characteristics Resulting from the Elimination of the Policy of Mandated Busing for Integration upon the Academic Achievement of African-American Students*, 17 Educ. Res. Q. 19 (1994); several Florida school districts, *see* Kathryn M. Borman et al, *Accountability in a Postdesegregation Era: The Continuing Significance of Racial Segregation in Florida's Schools,"* 41 Am. Educ. Res. J. 601 (2004); and Denver,

see Catherine Horn & Michal Kurlaender, *The End of* Keyes*—Resegregation Trends and Achievement in Denver Public Schools* (2006), *available at* http://www.piton.org.

CONCLUSION

For the foregoing reasons, the judgments of the Courts of Appeals upholding the constitutionality of the Seattle and Jefferson County school assignment policies should be affirmed.

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